

CLIFTON BUDD & DEMARIA, LLP
ATTORNEYS AT LAW

THE EMPIRE STATE BUILDING
350 FIFTH AVENUE, 61ST FLOOR
NEW YORK, NY 10118

TEL 212.687.7410
FAX 212.687.3285
WWW.CBDM.COM

March 26, 2021

Hon. Lorna G. Schofield
U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Onate v. ARHC Health Care, Inc.*
20-cv-8292 (LGS)

Dear Judge Schofield:

This law firm represents AHRC Health Care, Inc. (“AHRC”). I write to request a pre-motion conference concerning AHRC’s contemplated motion for a protective order as to certain discovery requests. Plaintiff served discovery requests on February 16, 2021. AHRC timely responded on March 18, 2021. The parties met and conferred by phone on March 26, 2021 in a good faith attempt to resolve the matters addressed herein but were unable to do so.

Improper Class Definition. AHRC objects to Plaintiff’s class discovery requests that are based upon the improper and overbroad class definition set forth in the Complaint. Plaintiff alleges a putative class of “current and former hourly paid and non-exempt employees of AHRC Health Care, Inc. and Care Design NY, LLC.” As concerns his employment with AHRC, Plaintiff was hired and paid as a salaried, exempt employee. He signed a Notice of Pay Rate acknowledging this. (see attached). Onate does not even meet his own class definition and yet he insists he is entitled to class discovery beyond his own job title and beyond his salaried, exempt status. Plaintiff asserts no facts to suggest that the pay practices applicable to him were similarly applied to AHRC’s hourly, non-exempt employees. To the contrary, what he is really claiming is that he was improperly classified as exempt, which is an issue particular to his job title. AHRC offered (1) to stipulate to a class definition encompassing Plaintiff’s job title, or (2) to sit for party depositions to develop a common understanding of the facts before further engaging on the class discovery issue. Plaintiff declined both, insisting he should get all the class discovery he wants, on his terms, before taking any depositions.

Improper Class Period. AHRC objects to class discovery requests that concern the period of time after Plaintiff’s employment with AHRC ended. After his employment with AHRC ended, he went to work for Care Design. He has since settled his claims against Care Design. Upon information and belief, Plaintiff’s settlement with Care Design explicitly stipulated that (1) Plaintiff was paid properly during the time he worked for Care Design, and (2) AHRC had no control over, or involvement in, the pay practices Plaintiff was subject to while working for Care Design. As such, AHRC proposed to limit class definition to the period that Plaintiff actually worked for AHRC. Plaintiff declined.

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ESI. Because FLSA/NYLL claims are strict liability offenses where liquidated damages are presumed absent a showing of good faith by the defendant, AHRC objects to general ESI requests absent (1) a showing of need on any particular issue or (2) Plaintiff's agreement to pay the cost of collecting the requested information. AHRC already produced Plaintiff's complete personnel file and time and pay records. Those records are sufficient to determine whether Plaintiff was paid lawfully or not. Where, as here, the ESI is unnecessary for Plaintiff to prove his case, asking Defendant to bear the cost of ESI retrieval inherently lacks proportionality. AHRC asked Plaintiff (1) whether there are any specific issues where ESI is necessary to add to Plaintiff's case, and (2) whether Plaintiff is willing to pay for the ESI they seek. Plaintiff declined the latter and failed to identify any issues on the former.

Other, Prior Claims. For the same reasons stated regarding ESI, AHRC objects to Plaintiff's requests for documents concerning other, prior wage claims. Plaintiff has all that he needs to determine whether he was subjected to unlawful pay practices. If so, liquidated damages will be presumed absent a showing of good faith. AHRC believes there is no proper purpose for Plaintiff to insist on this discovery.

I respectfully ask the Court to schedule a premotion conference to discuss these matters further. Fact discovery is presently scheduled to close April 16, 2021, and the parties are at an impasse due to the issues raised herein.

Thank you.

Very truly yours,



Arthur J. Robb

Cc: All Counsel of Record (via ECF)

**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law**

1. Employer Information:

Name:

NYSARC, Inc. New York City Chapter

Doing Business As (DBA) name(s):

AHRC New York City

FEIN:

13-5596746

Physical Address:

83 Maiden Lane
New York, NY 10038

Mailing Address:

83 Maiden Lane
New York, NY 10038

Phone:

(212) 780-2520

2. Notice Given:

- At hiring
- Before a change in pay rate(s), allowances claimed or payday

3. Employee's pay rate:

\$ 33,000

- Per hour
- Per diem
- Per week
- Fee for service
- Other YR

4. Allowances taken:

- None
- Tips _____ per hour
- Meals _____ per meal
- Lodging _____
- Other _____

5. Regular payday: Every other Friday

6. Pay is:

- Weekly
- Bi-weekly
- Other

7. Exemption/Overtime Pay Rate:

Employee is exempt from overtime:

- No

Yes,

Exemption type: _____

Overtime pay rate: \$ N/A per hour

This must be at least 1½ times the regular rate of pay with few exceptions.

8. Employee Acknowledgement: On this day, I received notice of my pay rate, overtime rate (if eligible), allowances, and designated payday. I told my employer what my primary language is.

Check one:

- I accepted this pay notice in English, because it is my primary language.
- My primary language is _____
I accepted this pay notice in English because the Department of Labor does not yet offer a pay notice form in this language on its web site.

ANTONIO ONATE, JR

Print Employee Name

 03/16/2018

Employee Signature

Date

CASEY BARBA OFFICE MGR

Preparer Name and Title